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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

M.R.,

Plaintiff and Respondent,

v.

SAMANTHA HARLOWE FREEMAN,

Defendant and Appellant.

B256838

(Los Angeles County  
Super. Ct. No. LS024982)

M.R.,

Plaintiff and Respondent,

v.

SCOTT D. FREEMAN,

Defendant and Appellant.

B256840

(Los Angeles County  
Super. Ct. No. LS024981)

APPEALS from orders of the Superior Court of Los Angeles County, Andrea C. Thompson, Judge. Affirmed.

M.R., in pro per, and Richard Darington Pfeiffer for Plaintiff and Respondent.

Honey Kessler Amado and Kristin L. Smith for Defendants and Appellants.

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The trial court issued a restraining order against Samantha Harlowe Freeman and Scott D. Freeman to protect 13-year-old M.R. and her father Michael R.<sup>1</sup> We affirm.

## **BACKGROUND**

### **I. Civil harassment statute**

A person who has suffered harassment may seek a restraining order. (Code Civ. Proc., § 527.6, subd. (a)(1).<sup>2</sup>) Such request is granted when a trial court finds clear and convincing evidence of unlawful harassment. (§ 527.6, subd. (i).)

Three types of unlawful harassment are covered by the statute. The first two concern unlawful violence and a credible threat of violence. (§ 527.6, subd. (b)(3).) The third is relevant here and is defined as “a knowing and willful *course of conduct* directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.” (*Ibid.*, italics added.)

“Course of conduct” is defined as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or computer email.” (§ 527.6, subd. (b)(1).)

Further, there must be a showing of substantial emotional distress, which contains objective (“would cause a reasonable person to suffer substantial emotional distress”) and subjective (“must actually cause substantial emotional distress to the petitioner”) components. (§ 527.6, subd. (b)(3).)

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<sup>1</sup> Because the petitioner is a child, we identify her by initials rather than full name. Similarly, because of the uncommon last name shared by the petitioner and her father, we identify the father by first name and last initial.

<sup>2</sup> All further statutory references are to the Code of Civil Procedure.

## **II. Facts of the case**

The Freemans lived a block away from M.R. and Michael R. since around 2010. After meeting M.R., Ms. Freeman began texting Michael R., seeking to spend time with the child. Michael R. repeatedly declined. Other than unintended encounters such as while walking her dog, M.R. never spent any time with Ms. Freeman.

In a cyclical manner, Ms. Freeman exhibited episodes of intense interest in spending time with M.R. and then apologized for her behavior. For example, on August 13, 2013, Ms. Freeman became insistent, via text message, that she come to M.R.'s house to see M.R. Michael R. instructed her not to come. Ms. Freeman nevertheless arrived at M.R.'s house and demanded to see the child.

The main incidents that triggered M.R.'s request for a restraining order occurred on February 6, 2014. Both Mr. and Ms. Freeman came to M.R.'s house several times that day. First, Ms. Freeman arrived at the house unannounced and, through the door, requested to see M.R.: "Just let me see your daughter. It can be a supervised visit." Michael R. refused. Later, because the door was unlocked, Ms. Freeman opened the door and entered the house, without Michael R.'s permission or knowledge. After a few minutes, Michael R. discovered Ms. Freeman was inside and told her to leave.

Although she did leave the interior of the house, Ms. Freeman remained at the exterior for two hours, banging on the windows and door and shouting at Michael R. and M.R. Ms. Freeman was shouting: "Why aren't you calling the cops? Are you scared? I'm not scared."

After those two hours, Mr. Freeman also arrived at M.R.'s house; then both Freemans began knocking on the windows and door and shouting. Mr. Freeman began shouting at Michael R. to return a video.

Then, the police arrived. They had received two calls from the Freemans seeking assistance: the first for retrieval of a video and the second for child endangerment. Officer Edmund Babaian went to Michael R. and M.R.'s front door and explained the two reasons for his arrival. Officer Babaian asked to see M.R. to investigate the child endangerment allegation and, when M.R. came to the door, determined that she appeared

safe. Michael R. told Officer Babaians that he does not have the video that the Freemans are seeking and that he does not want the Freemans on his property. Per Michael R.'s request, Officer Babaians thus directed Mr. Freeman to leave the property. Officer Babaians then himself left.

Within a few minutes, however, the Freemans returned to M.R.'s house, kicked the front door, and left. The police then received another call, this time from Michael R. Officer Babaians drove back to the house, and Michael R. explained that both Freemans had returned to the house and then left. Officer Babaians went to the Freeman house and asked why they had not followed his instruction to stay away from Michael R.'s house. The Freemans apologized, and Officer Babaians left. M.R. later testified at the court hearing that during these February 6 incidents, the Freemans' conduct scared her.

Less than a week later, on February 11, Michael R. requested a civil harassment restraining order against both Freemans to protect M.R. as well as himself. The trial court issued a temporary restraining order. Some time later, the Freemans claim to have moved.

After they moved, however, both M.R. and Michael R. saw the Freeman's car drive by their house at night. The car drove by very slowly and stopped. The car is distinctive, and both M.R. and Michael R. identified the license plate as the Freemans'. At the court hearing, M.R. testified that even if the Freemans may have moved, she is still afraid they may return to harass her.

### **III. Procedural history**

The trial court heard testimony from M.R., Officer Babaians, and Michael R. The Freemans did not appear at the hearing to offer testimony. Their attorney did cross-examine witnesses. M.R. also proffered evidence such as the text messages from Ms. Freeman to Michael R. seeking to spend time with M.R. (and Michael R.'s refusals), photographs of the damage to Michael R.'s front door, 911 calls from the February 6 incidents (from Ms. Freeman and Michael R.), and several affidavits. The Freemans did not present any evidence.

The trial court found persuasive the testimony of M.R. and Michael R. and particularly Officer Babaian. First, the trial court held that regardless of whether any physical violence occurred or the motive of the harasser (such as if Ms. Freeman wanted the best for M.R.), repeated harassing contact can be the basis for a restraining order. The trial court relied on Ms. Freeman's repeated text messages and Michael R.'s testimony that due to Ms. Freeman's insistent demands, he had to repeatedly instruct Ms. Freeman not to approach M.R.—which admonition Ms. Freeman violated several times. Second, the trial court held that even if the Freemans have moved, a restraining order is still needed. The trial court found persuasive M.R.'s testimony of the Freemans' vehicle driving by her house as well as the "fairly unusual nature of the contact in this case." Finally, though acknowledging that the evidence is different as to Mr. and Ms. Freeman, the trial court found sufficient evidence to issue a restraining order as to both. The trial court's restraining order against the Freemans is to last three years and protect both the child M.R. and her father Michael R.

## **DISCUSSION**

### **I. Standard of Review**

If, on the entire record, there is substantial evidence to support the finding of the trial court, we uphold those findings. (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or evaluate the weight of the evidence. (*Ibid.*) Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the trial court's order, and affirm even if other evidence supports a contrary conclusion. (*Ibid.*; *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1111, fn. 2; *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1405.) Appellants have the burden of showing *no* substantial evidence supports the trial court's order.

The Freemans concede that this court reviews the trial court's determination for substantial evidence but also argue this court's review is *de novo* because whether the facts are legally sufficient to constitute civil harassment is a question of law. That is not correct. We do not simultaneously apply both a *de novo* and substantial evidence review.

While the Freemans cite *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188, that case also addressed the purely legal issue of First Amendment concerns, which indeed is a question of law that receives de novo review on appeal. Here, the Freemans have not raised any such constitutional issues. Therefore, we review for substantial evidence.

## **II. Substantial evidence supports the trial court’s finding of clear and convincing evidence of unlawful harassment to justify a restraining order.**

### ***A. Course of conduct***

The Freemans argue that their conduct was limited to “one episode, perhaps over a two-hour period,” and therefore cannot be a “course of conduct.” The trial court, however, found that the Freemans exhibited multiple episodes of harassment over several months. The trial court relied on their text messages starting in August 2013 and the Freeman’s car driving slowly by M.R.’s house after February 6, 2014. Even on February 6, there was more than one episode: after banging on the windows and door of M.R.’s house and screaming for two hours, the Freemans returned—in violation of Officer Babaian’s instruction—and kicked the front door.

### ***B. Directed at a specific person***

The Freemans argue that their conduct was directed at Michael R., not M.R., and therefore cannot justify a restraining order to protect M.R. The trial court considered this argument and rejected it. Rightly so. To say that the Freemans’ conduct was not “directed at” M.R. is to ignore reality. The record shows Ms. Freeman was obsessively focused on M.R., with Michael R. the only shield protecting his child from Ms. Freeman. The Freemans admit that Ms. Freeman’s text messages were “about” M.R. and specifically her demands to spend time with the child. Ms. Freeman also made in-person demands to see M.R. and repeatedly went to M.R.’s house uninvited. M.R. personally witnessed both Freemans banging on the windows and door of her house and shouting for two hours while she was inside. While the Freemans claim that Ms. Freeman was not successful in spending time with or sending texts directly to M.R. (M.R. did not have a phone), the statute uses the broad phrase “directed at,” which does not require successful contact with the intended victim. (See *R.D. v. P.M.*, *supra*, 202 Cal.App.4th at pp. 186–

187 [harasser distributed flyers at petitioner's office building at night and at her son's school].) Michael R. may have received the texts and answered the door, but Ms. Freeman intended to contact M.R. Thus, there is substantial evidence to support the trial court's finding that the Freemans' conduct was directed at M.R.

Moreover, the trial court's order protects not only M.R. but also Michael R. Harassing behavior towards family members can justify an injunction protecting both the petitioner and her family. (See § 527.6, subd. (c); *Brekke v. Wills*, *supra*, 125 Cal.App.4th at pp. 1413–1414; *R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 183.) Thus, even if the Freemans' conduct was directed to Michael R., the trial court can issue a restraining order protecting M.R. too as a result of the substantial emotional distress suffered by his child (intended or not).

**C. Substantial emotional distress**

The Freemans argue there was no evidence that M.R. suffered substantial emotional distress. The record is to the contrary. M.R. testified on this issue, and the trial court was entitled to rely on that evidence. For example, M.R. testified that the Freemans' conduct on February 6 scared her. M.R. also testified that even if the Freemans may have moved, she is scared that they may return to harass her. The trial court can rely on testimony from the victim of the harassment as to whether she suffered substantial emotional distress. (*Brekke v. Wills*, *supra*, 125 Cal.App.4th at p. 1415 [relying on plaintiff's statements and demeanor in court].) Indeed, that is the most reliable evidence. No further evidence is required.

The Freemans also argue there is evidence that contradicts the trial court's finding, such as Officer Babaian's testimony that M.R. seemed in good health and Michael R.'s testimony that M.R. had a calm assessment. As an appellate court, we resolve all factual conflicts and draw all reasonable inferences in favor of the trial court's findings. (*Schild v. Rubin*, *supra*, 232 Cal.App.3d at p. 762.) Here, the record contains evidence that—after they stayed for hours banging on windows and screaming and then returned to kick her front door—the Freemans did eventually cause M.R. to cry. Thus, it is reasonable

that while M.R. initially appeared in good health and calm, the Freemans' continued harassing behavior caused substantial emotional distress to M.R.

The Freemans also argue that Ms. Freeman's text messages were sent to Michael R., and thus M.R. could not have suffered substantial emotional distress from events that she was not aware of at the time. But M.R. later became aware of those texts. Therefore, those messages could be factors causing M.R.'s current substantial emotional distress.

***D. Unlawful harassment is likely to recur in the future***

The Freemans argue that "[o]ne sighting" (when the Freeman's car drove slowly past M.R.'s house) is not sufficient to show their harassing conduct is likely to recur in the future. That one sighting, however, was in violation of the temporary restraining order. Indeed, while the Freemans argue that Ms. Freeman never violated Michael R.'s refusals that she visit M.R., in fact Ms. Freeman did. Several times. Ms. Freeman went to M.R.'s house in August 2013 and February 2014, despite Michael R. telling her not to, and even entered his house without his permission. She also violated a direct instruction by the police not to return to M.R.'s house.

The Freemans also argue that M.R.'s testimony on the Freemans' car driving slowly by her house after the temporary restraining order issued is "inherently unbelievable." The trial court considered this argument and rejected it; the trial court alone makes credibility determinations. It is reasonable, as M.R. testified, to recognize the car of neighbors who lived only a block away for several years. While the Freemans argue that M.R. did not "know" them, M.R. testified that she did *recognize* them: from regularly driving by their house on her way to school, seeing them outside while walking her dog, and of course watching the Freemans bang on the windows and door for two hours and scream. Plus, there is testimony that the Freemans' car is distinctive and therefore easy to recognize, which again supports the credibility of M.R.'s testimony. Further, Michael R. (who the Freemans admit knew them) also testified that he identified the license plate as the Freemans'.

The Freemans cite further evidence and seek this court to reweigh the evidence before the trial court. But we as the appellate court give full effect to evidence supporting the trial court's finding, however slight, and disregard contradicting evidence, however strong. (*Ensworth, supra*, 224 Cal.App.3d at p. 1111, fn. 2.) *First*, the Freemans argue that they have moved. The trial court considered this but nevertheless found a need for the restraining order, because it found credible the testimony from M.R. and Michael R. that the Freemans returned to M.R.'s house even after they moved. Further, the Freemans do not present evidence on how far away they moved, if at all. *Second*, the Freemans point to Ms. Freeman's February 2 text ("Seriously, don't bother contacting me again. All there can be at this point is drama") and allege "nothing in the evidence that even suggests that [Ms. Freeman] tried to contact [Michael R.] again." The trial court correctly rejected this absurd argument. Only a few days after that text, Ms. Freeman went to M.R.'s house on February 6, demanded to see the child, and shouted and banged on the windows and door for two hours. This evidence supports the trial court's finding that Ms. Freeman's promises to stay away are not credible. *Third*, the Freemans argue that M.R. and Michael R. could not see who was driving the Freemans' car. Yet, a reasonable inference is that one (or both) of the Freemans was driving their car. The Freemans have not alleged they were not in the vehicle and have presented no evidence that it was not at least one of them in the car. *Finally*, the Freemans note that they offered to agree to a stay-away order. But, as discussed above, the Freemans have a habit of harassing M.R. and Michael R. despite promising that they will not. In sum, there is substantial evidence to support the trial court's finding that the Freemans' conduct is likely to recur in the future.

***E. Mr. Freeman***

The Freemans argue insufficient evidence supports a restraining order against Mr. Freeman, because only Ms. Freeman sent the text messages seeking to spend time with M.R., Mr. Freeman's harassment was directed to Michael R., and neither M.R. nor Michael R. could see who was driving the Freemans' car. The trial court acknowledged the evidence as to Mr. Freeman is different than that as to Ms. Freeman but found

sufficient evidence to support an order. Indeed, substantial evidence in the record supports a restraining order based on Mr. Freeman's own harassing behavior as well as his link to Ms. Freeman's. In addition to the obvious close relationship between Mr. and Ms. Freeman based on marriage, Mr. Freeman came to M.R.'s house several times and shouted, banged on the windows and door, and kicked the door in violation of Officer Babaian's instruction to stay away from M.R. Further, Mr. Freeman's admission that his behavior was directed at Michael R. supports the trial court's order to protect Michael R.'s child who suffered substantial emotional distress from Mr. Freeman's behavior.

### **DISPOSITION**

The orders are affirmed. Costs are awarded to M.R.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

MOOR, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.